DEPUTY PUBLIC PROSECUTOR v. LIM KIAN MOK

[A. Cr. J. (Rose C.J.) March 8, 1962]

[Singapore — Magistrate's Appeal No. 246 of 1961]

Crown Lands — Unlawful occupation — Land leased to Services' Lands Board — Whether land ceases to be Crown Land.

Crown Lands Encroachments Ordinance (Cap. 245), ss.2 and 20 — Whether Services' Lands Board agent of the Crown — Whether land leased to Services' Lands Board was Crown land — Prosecution by Deputy Public Prosecutor — Whether proper.

Where Crown Land is vested in a statutory body, which is in fact a direct emanation of the Crown or a servant or agent of the Crown, in the absence of some specific excluding provision, it does not cease to be regarded as Crown land.

The respondent in this case was summoned with being in unlawful occupation of Crown land under section 2 of the Crown Lands Encroachments Ordinance and in the Court below the respondent's preliminary objection that the land in question was not Crown land was upheld. On appeal, it was contended for the respondent (a) that the appeal was brought by the wrong person and (b) that the land in question was not Crown land, and as such the proceedings had been brought under the wrong Ordinance.

Held: (1) as this was a quasi-criminal matter and there being no code other than the Criminal Procedure Code regulating a Magistrate's procedure, there was no objection to the appellant being designated as the Deputy Public Prosecutor;

(2) the land in question was part of land leased to the Services Lands Board, an agent of the Crown, and there was nothing improbable in the said Board holding lands for the purposes of the Crown.

Cases referred to:—

(1) *Territorial Forces Association* v. *Philpot*, [1947] 2 All E.R. 376.

(2) *Gilbert* v. *Corporation of Trinity House*, [1886] 17 Q.B.D. 795.

(3) *Tamlin* v. *Hannaford*, [1950] 1 K.B. at p. 22.

(4) *International Railway Company* v. *Niagara Parks Commission*, [1941] A.C. 328.

MAGISTRATE'S APPEAL.

J. E. Lloyd for the appellant.

Cheng Tim Pin for the respondent.

Rose C.J.: The respondent was summoned with being in unlawful occupation of Crown land under section 2 of the Crown Lands Encroachments Ordinance.

Learned counsel for the respondent took two preliminary objections to the appeal.

First, he contended that the appeal was brought by the wrong person and secondly, that it was brought under the wrong Ordinance.

To deal with the second point first, this would seem to hinge upon the result of the substantial appeal which requires the determination of the question whether the learned Magistrate was right in upholding a preliminary objection that the land in question had ceased to be Crown land.

As to the first point, assuming the appellant properly to be the Crown, the actual designation in which the Crown initiates the appeal seems to me to be of little importance. The appeal is from a Magistrate sitting in a Court duly constituted under section 90 of the Courts Ordinance. Sub-section (2) of that section provides that a Magistrate's Court shall have the powers and jurisdiction assigned to it by the Criminal Procedure Code.

The present may, in my opinion, properly be considered as a quasi-criminal matter. Apart from that there are, I understand, no civil rules applicable to Magistrate's Courts, there being no code that regulates a Magistrate's procedure other than the Criminal Procedure Code.

I therefore see no objection to the appellant being designated as the Deputy Public Prosecutor.

The substantial question raised in this appeal is whether the land in question was Crown land within the meaning of the Crown Lands Ordinance.

The learned Magistrate upheld the respondent's preliminary objection and dismissed the summons for the reason that, in his opinion, the land in question was not Crown land.

It is common ground between the parties that the land in question was part of land leased to the Services' Lands Board for 999 years from the 1st of November, 1959. The date of the complaint was the 2nd of August, 1961 and the summons was issued on the 29th of August, 1961.

Apart from section 20 of the Crown Lands Encroachments Ordinance, which carries the present matter little further, there would seem to be no definition of "Crown land" so that presumably the expression should be interpreted in the light of the natural meaning of the words.

The case of *Territorial Forces Association* v. *Philpot* [1] would seem to be authority for the proposition that one of the tests as to whether an association may be regarded as an agent or servant of the Crown is whether the purposes of the holding of the land or premises in question are public purposes, that is to say, in the language of Denning J. as he then was "for the public purposes of the country or the purposes of Government."

In *Gilbert* v. *Corporation of Trinity House* [2] the test as to whether or not a body was entitled to Crown privilege was whether it was an "emanation of the Crown." In the much later case of *Tamlin* v. *Hannaford* [3] Lord Justice Denning considered that the question was not so much whether the body under consideration was an emanation of the Crown but whether it was properly to be regarded as the servant or agent of the Crown; and cited in aid of the case of *International Railway Company* v. *Niagara Parks Commission* [4].

There would seem to be no authority for and no good reason for adopting the proposition that if Crown land is vested in a statutory body, which is in fact a direct emanation of the Crown or a servant or agent of the Crown whichever

phrase is to be preferred, it should, in the absence of some specific excluding provision, cease to be regarded as Crown land.

In determining whether the Services' Lands Board is a servant or agent of the Crown, to adopt Lord Justice Denning's phrase, one must presumably consider its constitution, control and purposes. Apart from the question of constitution, which can be derived from the Services' Lands Board Ordinance itself, the other elements would seem to be a matter of evidence, as no direct assistance can be derived from the Ordinance.

On the face of it there would seem to be nothing in the Ordinance which is inconsistent with the conception that the Services' Lands Board is an agent of the Crown.

Accepting that the expression "Crown" should be held to cover the Sovereign in her public capacity as a body politic embracing all her emanations, it is difficult to avoid the conclusion that the Armed Services of the Crown are one of the most important of such emanations.

Mr. Cheng Tim Pin in his able argument made the point that the Crown has many facets and that the Sovereign must at times be regarded in different capacities, vis-a-vis, for example, the United Kingdom and the State of Singapore.

Be that as it may, it does not seem to me to affect the basic conception of the Crown as being one and indivisible, even if it acts through separate fiscal agencies.

It is for these reasons that I have formed the view that the learned Magistrate was premature in dismissing the summons for the reasons that he did. There is, to my mind, nothing inherently improbable, on the face of the Ordinance, in the Services' Lands Board holding lands for the purposes of the Crown, within the wide definition that I have referred to above. It may well be — though it would perhaps seem to be unlikely — that an investigation into the purposes and practice of the Services' Lands Board might properly lead a Magistrate to a contrary conclusion. That position is conceded by the appellant and is, from one aspect, the basis of his complaint. He contends that he should at least be given an opportunity of adducing before the Magistrate evidence and arguments that the purposes and practice of the Board are consonant with the holding of such lands as are vested in them for the purposes of the Crown.

The appeal must therefore be allowed and the case remitted for consideration of the matters that I have mentioned; and for completion.

Appeal allowed.

Solicitors: *Drew & Napier; Rodyk & Davidson.*

Re SIMON NICHOLAS

[O.C.J. (Rose C.J.) March 9, 1962]

[Singapore — Admission of Advocates and Solicitors No. 23 of 1961]

Advocates and Solicitors — Admission — Reading in Chambers — Shortening of — Special circumstances.

An application for a reduction of the period of instruction in Chambers should not be regarded as a mere matter of form. Some special circumstances must be established. Long experience as a clerk in an advocate and solicitor's firm is not a special circumstance which would justify a reduction of the period.

APPLICATION FOR ADMISSION.

A. P. Godwin for the petitioner.

R. H. Green for the Bar Committee.

T. S. Sinnathuray (Crown Counsel) for the State Advocate-General.

Rose C.J. (delivering oral judgment): In this case the petitioner asks that there should be a reduction of the period of instruction in Chambers from twelve months to seven. A caution is entered by the Chairman of the Bar Committee and by Mr. Sinnathuray on behalf of the State Advocate-General. I say at once that there is no suggestion in this case that there is any criticism of the petitioner's standing as such or any suggestion that when he is ultimately admitted to the Bar he will not be a suitable member of the profession; but, a caution having been propounded, I have to consider the principles in this matter.

Now one must assume that the purpose of the legislature was to insure that a person after his call should have a period — which the legislature in its wisdom prescribes as twelve months — in which to work in Chambers. Here we have an application from a gentleman who has worked seven months in Chambers and I am asked to say that the period should be reduced because of special circumstances. On behalf of the petitioner it is said that he has had long experience as a clerk in the same firm and he is now working in the same firm as a member of the Bar. It is said that I should take his long experience as a clerk into consideration for reducing the period. I have been invited to look at this as a matter of principle, and on a matter of principle I am not inclined to accede to the request. I do not think that long experience as a clerk in a firm is a special circumstance which would justify a reduction of the period.

I would observe that an application for a reduction of this period in Chambers should not be regarded as a mere matter of form. Some special circumstances must be established. In the present case, in my opinion, there are none.